

In claimant's appeal to the Appeals Board, claimant requested judicial review of the Administrative Law Judge's decision denying claimant's request for the surgery.

A factual dispute exists between claimant's expert, Dr. Martinez, and respondent's expert, Dr. Donald C. Mann. Dr. Martinez diagnosed thoracic outlet syndrome and recommended left thoracic outlet surgery at a cost of between \$40,000 and \$50,000. Dr. Mann, after examining claimant, found claimant suffered no physical malady, specifically opining no surgery be performed at this time. The Administrative Law Judge rendered his decision on March 21, 1996, which stated "[t]hat the Claimant's request for authorization of surgery by Dr. Martinez is denied."

K.S.A. 44-534a(a)(2) allows for review of preliminary hearing decisions only when considering the following enumerated issues:

1. Whether the employee suffered an accidental injury.
2. Whether the injury arose out of and in the course of the employee's employment.
3. Whether notice is given or claim timely made.
4. Whether certain defenses apply.

K.S.A. 44-551(b)(2)(A) further allows for appeals from preliminary hearings if "it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

K.S.A. 44-534a(a)(1) states in part:

"After an application for a hearing has been filed pursuant to K.S.A. 44-534 and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation."

An administrative law judge is authorized to decide disputes dealing with the furnishing of medical treatment. The issue in dispute in this matter dealing with claimant's need for thoracic outlet surgery is well within the Administrative Law Judge's jurisdiction to decide. Therefore, the Appeals Board finds it does not have the jurisdiction to review this matter under either K.S.A. 44-534a or K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant's application for review should be, and is hereby, dismissed and the preliminary hearing Order of Administrative Law Judge Jon L. Frobish entered in this proceeding on March 21, 1996, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Elmo Lund, Oberlin, KS
Jerry Moran, Hays, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director